

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**NASHVILLE, TENNESSEE** REC'D TN  
REGULATORY AUTH.

IN RE: APPLICATION OF MEMPHIS )  
NETWORK, LLC FOR A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND )  
NECESSITY TO PROVIDE INTRASTATE )  
TELECOMMUNICATIONS SERVICES )  
AND JOINT PETITION OF MEMPHIS )  
LIGHT GAS AND WATER DIVISION, )  
A DIVISION OF THE CITY OF MEMPHIS, )  
TENNESSEE ("MLGW") AND A&L )  
NETWORKS-TENNESSEE, LLC ("A&L") )  
FOR APPROVAL OF AGREEMENT )  
BETWEEN MLGW AND A&L REGARDING )  
JOINT OWNERSHIP OF MEMPHIS )  
NETWORK, LLC )

\*00 JUL 6 PM 1 25

OFFICE OF THE  
EXECUTIVE SECRETARY

DOCKET NO. 99-00909

**REVISED PRE-FILED REBUTTAL TESTIMONY OF**  
**WADE STINSON ON BEHALF OF MLGW**

**Q. PLEASE STATE YOUR NAME, PLACE OF EMPLOYMENT, TITLE AND BUSINESS ADDRESS.**

A. My name is Wade Stinson. I am Vice President of Construction and Maintenance at Memphis Light Gas and Water Division, a Division of the City of Memphis, Tennessee. My business address is Memphis Light Gas & Water Division, 220 South Main Street, Memphis, Tennessee 38103.

**Q. WHAT DOES YOUR POSITION WITH MLGW ENTAIL?**

A. I am responsible for managing and coordinating the construction and maintenance operations of MLGW, tracking MLGW's performance and comparison with private contractors and overseeing the heavy equipment and transportation fleet. I have worked on evaluating MLGW's entry into the telecommunications business.

**Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

A. I am a graduate of the University of Mississippi, where I received a Bachelor of Science degree in Civil Engineering. I am a registered Professional Engineer in the state of Tennessee.

**Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

A. I became Vice President of Construction and Maintenance in 1998. I joined MLGW in 1978 as a Junior Engineer and also served as Assistant Manager, Gas Distribution; Manager, Gas Distribution; Manager, Hickory Hill Service Center and Manager of Personnel.

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

A. The purpose of my testimony is to respond to certain statements made by William Barta in the testimony he filed in this docket on behalf of the Tennessee Cable Telecommunications Association (TCTA).

**Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

A. In summary, Mr. Barta has made unsubstantiated innuendoes that were about documents and excerpts from documents that he has obtained from MLGW files and other sources. Many things are discussed and various people have opinions when a project of this magnitude is undertaken. At the time that these memos were written, the Umbrella and Operating Agreement had not been signed and we were still deciding what form the venture would take. MLGW has not restricted access to information as evidenced by the volume and content of documents that have been delivered to the intervenors through open records requests and discovery. MLGW's existing infrastructure will be made available to Memphis Networkx through arms-length negotiations. MLGW facilities are available to other carriers through similar negotiations. MLGW's personnel have been involved in appropriate planning and investigation as to the formulation of the telecommunications venture. These expenses will be allocated to the Telecommunications Division as appropriate, upon approval of this application and Joint Petition by the TRA. No construction that requires TRA approval has been instituted.

**Q. DO YOU KNOW WHERE MR. BARTA OBTAINED THE DOCUMENTS FROM WHICH HE QUOTES EXCERPTS IN HIS TESTIMONY AND EXHIBITS?**

**A.** Some of the documents came from my files and the files of other MLGW employees pursuant to a public records request made by John Farris, Counsel to TCTA. MLGW responded to that request in December of 1999. Other documents were obtained from the Applicant and Joint Petitioners pursuant to the responses to data requests filed by TCTA in this docket.

**Q. MR. McCULLOUGH RESPONDED TO SOME OF THE CORRESPONDENCE IN MR. BARTA'S EXHIBITS, HOWEVER, HE DEFERRED TO YOU ON OTHERS. LET'S START WITH EXHIBIT WJB-2 WHICH SETS FORTH MR. BARTA'S CONCERNS REGARDING MEMPHIS NETWORK'S USE OF MLGW'S EXISTING INFRASTRUCTURE.**

**A.** 2. September 29, 1999 memo from Mike Kissell to Wade Stinson – Mike Kissell is the Supervisor of Telecom Engineering for MLGW. He coordinates use of electric division infrastructure with third parties, such as CLEC's use of pole attachments. Mr. Barta uses the memo in question to infer that MLGW has leveraged its network for the benefit of Memphis Network in a manner that is inconsistent with its proposal to the TRA. That is not true. This memo was dated September 29, 1999 prior to the actual formation of Memphis Network as a legal entity, which occurred on November 8, 1999. This memo constitutes discussions regarding planning of the network which may be used by any carrier for a price. The fact of the matter is that none of the network discussed in this memo has been deployed and the contract with Entergy has not been finalized as of the date of this testimony. The most recent draft of the proposed contract with Entergy was provided to TCTA pursuant to the responses of the data requests filed by TCTA. Although the September 29, 1999 memo says that the Entergy project has reached "crunch time", the crunch was obviously Entergy's perception, because none of the fiber discussed in this memo has been deployed.

3. November 25, 1999 enter departmental communication from Mike Kissell - This is a trip report which Mike Kissell circulated to various personal at MLGW. When MLGW personnel return from seminars, workshops or conferences they circulate memorandum regarding the information presented at the conference. Mr. Kissell was merely reporting on a telecommunications workshop he attended in October 1998. This document was informational only and is not a reflection of the nature of MLGW telecommunications venture.

4. **A&L Networks LLC December 1, 1998 response to MLGW request for proposal for strategic telecommunications partnership** - This document is just that, a response to a request for a proposal. It has no binding affect on MLGW. This was A&L Networks proposal to MLGW and contains information about how MLGW can leverage its assets to provide telecommunication services, however at that time no decisions had been made as to how telecommunication services would be provided. To the extent that it makes reference to MLGW having leveraged its asset base to provide telecommunication services, this reference is to MLGW's cellular tower leases. As stated earlier, if Memphis Networkx wishes to lease any of MLGW facilities it may negotiate leases at arms length. No such leases have been negotiated. Memphis Networkx has separate offices from MLGW and there is no plan for joint facilities.

5. **MSF Network Technology response to MLGW request for proposal for telecommunications strategic partner** - Again this is merely an excerpt from a proposal by MFS in response to the RFP. The fact that MFS has made suggestions that MLGW will leverage its right of way and other utilities assets in providing service to existing customers, does not mean that it will in fact do so.

6. **BellSouth Business Systems response to MLGW request for proposal for Telecommunication Strategic Partner** - Again this was a response by BellSouth Business Systems to the RFP. If MLGW had entered the telecommunications business directly through the telecommunications division, not using a separate entity it is likely that it would have utilized joint facilities and allocated those resources similar to the way it allocates the provision of gas, electric and water without providing cross subsidies. However, after studying the project further MLGW decided to create a separate entity. This structure provides an additional safeguard against subsidy between MLGW and such an entity.

7. **March 24, 1999 memo from Erik Wetmore to MLGW Corp.** - Erik Wetmore is a Consultant for Arthur D. Little (ADL). The subject of this memo is the proposed insulation of fiber optic ground wire by Entergy that is also referred to in the September 29, 1999 memo from Mike Kissell to me. As stated earlier, no fiber has been deployed pursuant to this proposal and as of the date of this testimony the contract with Entergy has not yet been executed.

8. **March 2, 1999 letter from Joel Halvorson of Arthur D. Little to Wade Stinson and Alex Lowe** - Joel Halvorson requested information regarding MLGW's existing facilities so that ADL could make

recommendations regarding possible use in a telecom proposal. Again, this information was collected in the planning stages and Mr. Barta has taken it out of context. No utility construction schedules of MLGW have been adjusted to capture the benefit of joint construction with a communications network, as joint construction is no longer contemplated.

9. **January 6, 1999 proposal of A&L Networks LLC, Arthur D. Little, Inc. and Nortel Networks to MLGW for a Strategic Telecommunications partnership** - This was a proposal presented to MLGW. The proposal was made in an interview that was granted to the three finalists in the RFP process. This is a statement of what MLGW could do, but it is not what MLGW has decided to do.

**Q. LET'S NOW GO TO EXHIBIT WJB-3 WHERE MR. BARTA RAISES CONCERNS ABOUT ACCESS TO MLGW PERSONNEL AND CUSTOMER INFORMATION. PLEASE COMMENT ON THE EXHIBITS THAT HAVE NOT BEEN COMMENTED UPON BY OTHER WITNESSES.**

**A. 1. A&L Networks LLC December 1, 1998 response to MLGW Request for Proposal for Strategic Telecommunications Partner.** This is the same response to the RFP that I mentioned earlier in commenting on WJB-2. References are made to benefits to be gained by offering bundled services and shared billing and customer service facilities. Although A&L proposes that this is the way in which the service could be provided, after studying the issue MLGW decided to go with a separate entity to provide the telecom service. If MLGW were to decide in the future to engage in shared billing or joint marketing with Memphis Networx it would be done in the same manner as with other third parties. In Section 2.2 .2 of the proposal A&L Networks points out that MLGW provides access to every potential customer in the region. Much of the information in this section was designed to give MLGW an idea of the potential customer base which relates to the potential market for telecommunication services. As stated in its pre-filed direct testimony, MLGW plans to serve other carriers as well as large end-users. At some time in the future it may serve residential customers.

**2. March 2, 1999 letter from Joel Halvorson of Arthur D. Little to Wade Stinson and Alex Lowe** Again, this was a letter from a consultant making recommendations as to how we should facilitate the planning process. ADL personnel talked with people in our marketing area, however, the marketing research was done by ADL with the help of a local marketing research company. The fact that MLGW had employees involved in investigating whether the Electric Division should get involved in the

telecommunications industry does not mean that Memphis Networkx has unlimited access to MLGW personnel. MLGW had and has responsibility to evaluate the project and the investment. This has been and is appropriate use of MLGW resources for the benefit of MLGW.

3. **January 6, 1999 proposal of A&L Networks LLC, Arthur D. Little and Nortel Networks to MLGW for Strategic Telecommunications Partnership** - This is the same proposal that was referred to in item 9 of WJB-2, as stated earlier MLGW made the decision to create a separate entity therefore its asset base will not be leveraged in the way proposed in this document.

4. **March 10, 1999 memo from Joel Halvorson to Wade Stinson** - the "Gene" referred to in the memo is Gene Crawford, Assistant Manager of Distribution Support. Joel Halvorson is a Consultant for Arthur D. Little (ADL). He suggested to me that MLGW employees should be involved in network planning and market analysis that would require a 50 percent time commitment between March 1999 and the end of April. However, we did not totally accept his recommendation. Gene Crawford and Mike Kissell were involved about 5 to 10 percent providing information to ADL regarding MLGW's standards for network planning so that ADL could make recommendations. This type of information is routinely made available to telecommunications providers interested in or involved in deploying facilities in Shelby County. However, MLGW did not get involved in market analysis activities as indicated in the next memo listed in WJB-3, i.e., the April 8, 1999 memo from Joel Halvorson to Wade Stinson.

5. **April 8, 1999 e-mail from Joel Halvorson to Wade Stinson** - ADL used an outside market research firm to do marketing analysis. I responded to the April 8, 1999 e-mail and told him to do the marketing analysis as long as it did not exceed the budget for developing a telecommunications business plan.

**Q. PLEASE RESPOND TO EACH OF THE DOCUMENTS IN WJB-4.**

A. 1. **April 9, 1999 letter from Alex Lowe to W.L. Thompson** - This letter is dated before the operating agreement was signed. There is no licensing agreement between MLGW and Memphis Networkx.

2. **A&L Networks LLC December 1, 1998 response to MLGW Request for a Proposal for Strategic Telecommunication Partnership-2.21 reputation/ brandname** - This is a reference to the proposal presented by A&L Networks that was mentioned earlier in WJB-2. It is true that MLGW is a highly respected company in the Memphis area

and has a solid reputation as highly regarded employer, a provider of safe and reliable utilities services and a supporter of community development. Certainly as a part owner of Memphis Networkx, MLGW expects Memphis Networkx to engage in business in a way that will allow it to earn a similar reputation. To the extent that MLGW representatives are on the board of governors of Memphis Networkx they will seek to ensure that Memphis Networkx provides quality service. We expect the association with MLGW and its high standards to be a plus for Memphis Networkx as it enters the market.

There is also a reference in the excerpt that Mr. Barta extracted from the proposal which indicates that the telecom venture will not provide retail competition telecommunication services. During the process of developing a telecommunications business proposal the idea of the venture being merely a carriers' carrier was discussed, however, as the plan evolved it was determined that the telecommunications venture would provide services to end-users - initially to large businesses, and perhaps three years out to small businesses and residential customers.

3. **January 6, 1999 proposal of A&L Networks LLC, Arthur D. Little, Inc. and Nortel Networks to MLGW for Strategic Telecommunications Partnership** - This is the same proposal mentioned in Mr. Barta's earlier exhibits. While it is true that MLGW is a highly respected employer, provides safe and reliable services and is a supporter of community development, MLGW has decided not to provide telecommunications directly through its telecommunications division, but through a separate entity.

4. **November 25, 1999 interdepartmental communication from Mike Kissell.** This is the same report which Mike Kissell made on a seminar that he attended. This refers to the statement of a speaker at a telecom seminar talking in general about telecom service provided by municipalities.

**Q. LET'S MOVE ON TO WJB-5. PLEASE COMMENT ON THE DOCUMENTS THAT HAVE NOT BEEN RESPONDED TO IN WHICH BARTA BELIEVES THERE IS CONCERN REGARDING THE DEPLOYMENT OF FACILITIES AND ENTERING INTO CONTRACT PRIOR TO RECEIVING REGULATORY APPROVAL.**

**A. 1. June 1, 1999 letter from Alex Lowe to Wade Stinson and Larry Thompson** - This letter refers to the installation of empty conduit tubing that was installed by A&L Underground while trenches were open during a construction project for installation of utilities for various subdivisions. The

raw conduit tubing has nothing in it that is operable. At a later time, it can be used to pull a conductor through it. Conductors that might be suitable to be pulled through this conduit are fiber, cable, phone cable or a small gas line. A&L Underground had a contract with MLGW to install gas and underground electric facilities and while the trenches were open, A&L Underground asked permission to install the raw conduit tubing at its own expense and risk. It is our understanding that Memphis Networkx is not committed to buy or lease this conduit tubing. It is further my understanding that A&L Underground has offered to sell or lease this conduit to other carriers such as BellSouth and Time Warner.

**2. April 1, 1999 letter from Alex Lowe to J. B. Hollingsworth, General Manager, BellSouth Telecommunications, Inc.** - This letter was in my file because I was copied on it. The memo is not related to the Memphis Networkx project but involves our correspondence between A&L Underground and BellSouth regarding Bell's desire to install cable in the MLGW trench while the trench was open for a construction project was being performed by A&L Construction relating to other MLGW utilities.

**3. May 24, 1999 meeting notes.** These notes were made by me prior to the determination that the telecom venture would involve a separate entity. So any thought of transferring the conduit to MNet related to a transfer to the Telecommunications Division of MLGW. Please remember that a separate entity called MNet did not exist at this time. MNet was what we called the proposed telecom venture. There is no intent on transferring any of this conduit to Memphis Networkx. If Memphis Networkx decides to use it, they will negotiate a fair price like any other carrier. The reference to "need to move to MLGW crews and other contractors, also install conduit" refers to a thought that it may be wise for MLGW to consider installing raw conduit tubing in open trenches for use by MLGW or other third-parties for the possible uses listed above. It is cheaper to install this type of conduit while the trench is open as opposed to opening the trench later to install conduit. Once the conduit is installed, you can merely pull the applicable conductor through it at substantial savings. MLGW crews have never installed, nor are presently installing, any empty conduits.

**4. September 29, 1999 memo from Mike Kissell to Wade Stinson** - This is the same memo that was referred to in WJB-2, no. 2. This refers to the proposed contact with Entergy. Some of the proposed fibers that are to be deployed under the proposed contracts are for MLGW's use. The money included in the capital budget that is referenced there are for the MLGW fiber. The proposed contract contemplates that MLGW can request additional fiber which could be used for any third-parties requesting their



use. It is expected that MLGW would own all the fiber. As stated earlier, the contract has not been entered into and no fiber has been deployed.

5. **October, 1999 Agreement between MLGW and A&L Networks-Tennessee, LLC to establish a joint venture to provide Telecom Services – John McCullough will address this document.**

**Q. PLEASE COMMENT ON WJB EXHIBIT 6 WHICH IS A MEMO FROM ALLEN LONG TO MICHAEL KISSELL AND WADE STINSON.**

A. Allen Long is the Supervisor of Distribution Engineering for MLGW. This memo is dated September 15, 1999, which is before the Operating Agreement was signed. We were therefore still in the planning stages for the telecom venture. **[The next sentence was struck pursuant to the Pre-Hearing Officer's April 28, 2000 Order.]** Mr. Long has not been directly involved in the telecom venture. **[The remainder of this sentence was struck pursuant to the Pre-Hearing Officer's April 28, 2000 Order.]** MLGW construction crews have not run service drops nor done any of the other things that Mr. Long would suggest as possibility in the next to last paragraph of Exhibit WJB-6.

**Q. PLEASE RESPOND TO MR. BARTA'S ALLEGATION THAT THERE WAS AN ATTEMPT BY MLGW TO RESTRICT ACCESS TO INFORMATION WHICH IS SET FORTH ON PAGE 13, LINES 17-36 THROUGH PAGE 14, LINES 1-8.**


A. First, I think it is important to note that this is an e-mail that came from my files, and the only reason that the intervenors have access to this e-mail is because MLGW gave it to them pursuant to a public records request. It is not unusual for private companies engaged in competitive activities to want to keep their competitively sensitive documents out of the hands of their competitors. **[Portions of this paragraph were struck pursuant to the Pre-Hearing Officer's April 28, 2000 Order.]** I can honestly say that no list of sensitive information was compiled and no documents were moved from MLGW to A&L or Memphis Networx to prevent disclosure of sensitive information. As stated in MLGW and A&L's response to the data request from TCTA, "Max" (Max Williams, General Counsel of MLGW) and MLGW's other legal counsel were not aware of this e-mail until their review of documents in responding to John Farris' December 1999 public records request. "Ricky" (Ricky Williams, Counsel for A&L) was not aware of this e-mail until the data request by TCTA was made.

**Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

**A. Yes.**

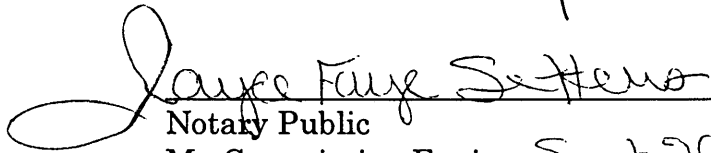
**VERIFICATION**

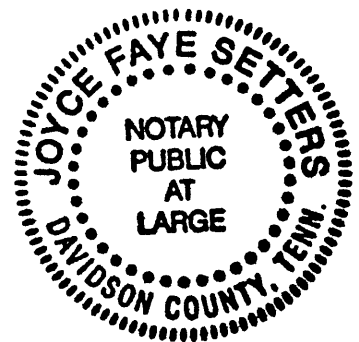
I, Wade Stinson, declare under penalty of perjury that I am authorized by Memphis Light Gas & Water Division to testify on its behalf, that I have caused the foregoing written testimony to be prepared on my behalf, that I have read the foregoing testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Wade Stinson, Vice President of  
Construction and Maintenance of  
Memphis Light Gas Water Division

STATE OF TENNESSEE )  
                                  )  
COUNTY OF SHELBY )

Sworn to and subscribed before me this 1 day of May, 2000.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: Sept 29, 2001



My Commission Expires \_\_\_\_\_